

**U.S. Department of Justice**

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February 24, 2006

**Via Electronic Filing**

The Honorable Joseph J. Farnan, Jr.  
United States District Court Judge  
District of Delaware  
J. Caleb Boggs Federal Building  
Room 4124  
Lockbox 27  
Wilmington, DE 19801

Re: Status of Non-Compliance in United States v. Ben-Cen, 06-mc-0003 (JJF)

Dear Judge Farnan,

As per your request at the conclusion of the hearing in this matter, the United States is writing to you to update the Court on the status of the defendant's partial compliance with this Court's Order of February 9, 2006. As set forth below, although the defendant has produced some documents in response to the Internal Revenue Summons at issue in this matter, it has failed to fully comply with the Summons and this Court's Order because it has failed to produce documents and records of cash receipts. Accordingly, the United States respectfully requests that this Court take any steps necessary to bring Ben-Cen, Inc. into compliance with the Internal Revenue Summons served upon it on July 28, 2005.

On January 18, 2006 this Court issued an Order to Show Cause ordering Ben-Cen, Inc. to appear on February 8, 2006 and show cause why it should not be compelled to obey the Internal Revenue Summons served upon it on July 28, 2005. Prior to this hearing date, Ben-Cen, Inc. produced some corporate records but did not fully comply with the Internal Revenue Summons. On February 8, 2006, the Court held the hearing on this matter, but Ben-Cen, Inc. did not appear or otherwise explain why it had not fully complied with the Summons. On February 9, 2006, the Court issued an Order commanding Ben-Cen, Inc. to comply with the Internal Revenue Summons no later than Tuesday, February 21, 2006.

On February 21, 2006, the date by which the Court had ordered Ben-Cen to comply with the Summons, Russell Applegate, President of Ben-Cen, Inc., appeared at the Internal Revenue Service office and produced additional corporate documents and records. Despite repeated requests by Special Agent Tom Anastasia, none of the documents produced on or before February 21, 2006 contained any documents or records of receipts by the business. When asked

about records of gross receipts, Russell Applegate reported to the agent that the company had records of gross receipts in the form of calculator tapes, computer information, and credit card receipts. On the next day, February 22, 2006, Russell Applegate again appeared at the Internal Revenue Service office to produce additional responsive documents and records. The documents and records produced on February 22, 2006 consisted only of credit card receipts.

Thus, as set forth above, although Ben-Cen, Inc. has partially complied with the Internal Revenue Summons, it has not fully complied with the Summons because it has failed to produce documents and records of cash receipts. Of note, Russell Applegate, President of Ben-Cen, Inc., has specifically acknowledged that these records exist in the form of calculator tapes and computer information. Therefore, Ben-Cen has not fully complied with the Summons and is, consequently, in violation of this Court's order to do so. Accordingly, the United States respectfully requests that this Court take any steps necessary to bring Ben-Cen, Inc. into compliance with the Internal Revenue Summons served upon it on July 28, 2005.

Respectfully submitted,

Colm F. Connolly  
United States Attorney

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cc: Ben-Cen, Inc./Russell Applegate (by mail)